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Martin Moynihan PRTSI Inc P O Box 16446 Arlington, VA 22215			GEBREMICHAEL, BRUK A	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,257	<b>Applicant(s)</b> GORDON, RONI
	<b>Examiner</b> BRUK A. GEBREMICHAEL	<b>Art Unit</b> 3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 August 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-64 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-64 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 11 October 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/G6a/b)  
 Paper No(s)/Mail Date 09/28/2006, 08/08/2008

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 6 is objected to because of the following informalities: the group "500 600" in line 2 of this claim is believed to be a typographical error and should be rewritten as, -- 500, 600 --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- Claims 33-55, are rejected under 35 U.S.C. 101 because the claimed invention is drawn to a non-statutory subject matter.

Regarding claims 33-47, these claims appear to be an apparatus or device claims directed to a *non-functional descriptive matter*. The claimed subject matter, "display" appears to have no structural and/or functional limitations as required under 35 U.S.C 101 for an apparatus or a device claim. The display merely shows some information with no structural and/or functional relationship between the substrate (i.e. the display) and the information on the display.

Regarding claims 48-55, these claims appear to be method claims however, the claimed limitations in these claims do not have sufficient tie to an apparatus or a device. In order to be considered patent eligible under 35 USC 101, a claimed process must contain a sufficient tie to a machine, article of manufacture or a composition of matter.

*In re Comiskey*, 84 USPQ2d 1670 (Fed. Cir. 2007). In this case, the claimed invention

does not have a sufficient tie to any machine, article of manufacture or a composition of matter.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-47 and 56-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The above claims appear to have no transitional phrases such as "comprising", "consisting of" etc. in each of the independent claims. Independent claims are required to have such transitional phrases that distinguish the body of the claim from the preamble. In addition:

Claims 4, 13 and 17, recite the limitation "ERP" in line 1 of each of these claims. This limitation appears to be an abbreviation; however any abbreviation needs to be defined at least once in a claim where it first appears.

Claim 6 recites the limitation "the desired number" in line 1 of this claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 33 and 34 recite the limitation "the selected amount" in line 2 of claim 33, and the limitation "the package" inline 1 of claim 34. Here also, there is insufficient antecedent basis for these limitations in the claims.

Claims 58-64 recite the limitation "The composition" in line 1 of each of these claims. There is insufficient antecedent basis for this limitation in the claims as it is not clear what "composition" these claims are implying.

Further, the use of the following phrases, "can", "about" in any of the above claims render the claim (and the subsequent dependent claims) indefinite since it is not clear whether the limitations following these phrases are part of the claimed invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1-3, 5, 7, 10-12, 19-20, 23 and 25 are rejected under 35 U.S.C. 102(b) as being unpatentable over Missler 6,359,239.

Missler discloses the following claimed limitations:

Regarding claim 1, a portioning device that can portion a food based on the number of calories or Centicals of the portion of food (col.2, lines 41-46 and col.3, lines 51-59),

Regarding claim 2, the weight of the food is converted to calories or Centicals (col.5, lines 61-67),

Regarding claim 3, the conversion is made through the device's internal computer software (col.6, lines 3-8),

Regarding claim 5, a portion with a pre-determined number of calories can be provided (col.3, lines 61-67),

Regarding claim 7, the device is selected from the group consisting of a cutting machine, shredder and dicer (col.1, lines 12-20),

Regarding claim 10, a weighing device that can display the number of calories or Centicals of a food (col.3, lines 51-55) and wherein a) the device provides nutritional information per pre-determined number of calories or b) can compute the price of the food (col.3, lines 59-64),

Regarding claim 11, the weight of the food is converted to calories or Centicals (col.5, lines 28-31),

Regarding claim 12, the conversion is made through the device's internal computer software (col.6, lines 3-8),

Regarding claim 19, the device of claim 10 which is integrated with another device (col.4, lines 7-12),

Regarding claim 20, the other device is selected from the group consisting of a wrapping machine, size reduction machine, label printer and cash register (col.3, lines 51-55),

Regarding claims 23 and 25, the device provides nutritional information per pre-determined number of calories, wherein the information is weight per pre-determined number of calories (col.3, lines 59-64 and col.6, lines 16-22).

- Claims 26-27 and 29-31 are rejected under 35 U.S.C. 102(b) as being unpatentable over Overman 5,483,472.

Overman discloses the following claimed limitations:

Regarding claim 26, a register that provides the price and approximate caloric or Centicals content of a food (col.4, lines 1-8),

Regarding claim 27, the caloric content is accessed through the internal software of the device (see FIG 4A),

Regarding claim 29, the caloric content is printed (col.4, lines 8-12),

Regarding claims 30 and 31, wherein it can add the caloric content of two or more packages, wherein it can provide, the total number of calories of all foods purchased (col.4, lines 1-8).

- Claims 56-58 and 64 are rejected under 35 U.S.C. 102(b) as being unpatentable over RHEE 2001/0043968.

RHEE discloses the following claimed limitations:

Regarding claim 56, a food product and packaging material that packages the food product, the packaging material displaying the nutritional content of a food product per a pre-determined approximate number of calories or Centicals (see Para.0029, lines 1-7),

Regarding claim 57, a plurality of different food products of the food product of claim 56, each having said pre-determined approximate number of calories or Centicals (Para.0030, lines 1-12),

Regarding claim 58, the number is substantially uniform number with the number reported for one or more other food products (para.0033).

Regarding claim 64, the pre-determined approximate number of calories is selected from the group consisting of 50, 100, 150, 200, 250, 300, 350, 400, 450, 500, 600, 750 and 1000 (see FIG 2b).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- Claims 33 and 36-38 are rejected under 35 U.S.C. 102(e) as being unpatentable over Arrendale 2004/0045202.

Arrendale discloses the following claimed limitations:

Regarding claim 33, a display that provides the approximate number of calories of a serving of food and the approximate number of calories of the selected amount of the food, wherein these two approximate numbers are different (Para.0005 and FIG 1, label 40),

Regarding claims 36-38, the display of claim 33, which is in the form of a table, the display of claim 33, which is printed, the display of claim 37, which is on a label (see FIG 1, label 4).

- Claims 40 and 42-46 are rejected under 35 U.S.C. 102(e) as being unpatentable over Bukowski 2003/0106940.

Bukowski discloses the following claimed limitations:

Regarding claims 40 and 42, two or more displays that provide nutritional information per substantially uniform caloric content, at least two of such foods are different types of foods (see FIG 3),

Regarding claim 43, at least two of such foods have different weights (see total grams of each item in FIG 3 (not shown)),

Regarding claims 44-46, the displays of claim 40, which are in the form of a table, which are printed, which are on a label (FIG 3).

- Claims 48-49 are rejected under 35 U.S.C. 102(e) as being unpatentable over Morris 2004/0138820.

Regarding claim 48, Morris discloses the following claimed limitations, a method of reporting the nutritional content of a food product comprising reporting the nutritional content per a pre-determined approximate number of calories or Centicals (FIG 1 and Para.0053),

Regarding claim 49, the number is substantially uniform number with the number reported for one or more other foods (FIG 1, see *Amples values of various food items*).

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 4, 6, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239.

Regarding claims 4 and 13, Missler discloses the claimed limitations as discussed above.

Even if Missler does not explicitly disclose wherein the conversion is made through ERP, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use any program in the device that converts the weight of a given food item to a calorie since incorporating such function in the device is already old and known in the art (as already taught in the prior art). Therefore, using a particular program in the device (e.g. "ERP") that has the same function as that of the prior art requires only a routine skill in the art.

Regarding claims 6 and 22, Missler discloses the claimed limitations as discussed above.

Even if Missler does not explicitly disclose, *the desired number of calories is selected from the group consisting of about 50, 100, 150, 200, 250, 300, 350, 400, 450, 500 600, 750 and 1000, the calories are in about multiples of 50*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that calories on labels of food packages are often expressed as multiples of some percentage (or integer values), and therefore, specifying a particular integer as a multiple that have the same purpose (as taught by the prior art) requires only a routine skill in the art.

- Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Prussia 5,372,030.

Regarding claim 8, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the device is a fruit or vegetable sorting machine.

However, Prussia teaches, a device being a fruit or vegetable sorting machine (col.5, lines 36-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Prussia by incorporating a portable firmness testing device in order to help the user to easily identify the fruits that are ripe before measuring their weight so that the user would collect only those that are suitable.

- Claims 14-18, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Overman 5,483,472.

Regarding claim 14, Missler teaches the claimed limitations as discussed above.

Missler does not explicitly teach, wherein the device is a price computing scale.

However, Overman teaches a device being a price computing scale (col.4, lines 1-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Overman by incorporating a portable record keeper in order to help the user to determine the price of the food items he/she is purchasing in addition to the calorie so that the user would

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make an informed decision not only based on the calorie of the food item, but also based on the price of the food item.

Missler in view of Overman teaches the claimed limitations as discussed above.

Missler further discloses,

Regarding claims 15 and 16, the device accesses a weight-calorie conversion table, wherein the table is accessed through the internal software of the device (col.6, lines 23-28).

Regarding claim 17, Missler in view of Overman teaches the claimed limitations as discussed above.

Even if Missler in view of Overman does not explicitly teach, *wherein the table is accessed through ERP*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use any program in the device that converts the weight of a given food item to a calorie since incorporating such function in the device is already old and known in the art (as already taught in the prior art). Therefore, using a particular program in the device (e.g. "ERP") that has the same function as that of the prior art requires only a routine skill in the art.

Missler in view of Overman teaches the claimed limitations as discussed above. Overman further teaches,

Regarding claims 18, 21 and 24, the device can add the caloric content of two or more packages of food (col.4, lines 6-9), the caloric information is printed (see col.4, lines 8-12), wherein the information is price per pre-determined number of calories (col.4, lines 1-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Overman by incorporating a portable record keeper in order to calculate the total calorie of the food items that the user is purchasing so that the user would know whether he/she has reached the predetermined amount of calorie required for a given meal, in addition to the price of the food item.

- Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Overman 5,483,472.

Regarding claim 28, Overman discloses the claimed limitations as discussed above.

Even if Overman does not explicitly disclose, *the caloric content is accessed through ERP*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use any program in the device that converts the weight of a given food item to a calorie since incorporating such function in the device is already old and known in the art (as already taught in the prior art). Therefore, using a particular program in the device (e.g. "ERP") that has the same function as that of the prior art requires only a routine skill in the art.

- Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Overman 5,483,472 in view of Morris 2004/0138820.

Regarding claim 32, Overman discloses the claimed limitations as discussed above.

Overman does not explicitly disclose, the total number is rounded to either the nearest or higher 50.

However, Morris teaches rounding the calorie (i.e. Ample values) of the food items to the nearest multiple (Para.0046).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Overman in view of Morris by using a suitable integer in order to express the calorie contents of various food items to the nearest multiple of this integer so that it would be easier to consumers to compare the calorie values of the various food items on the same standard.

Here, even if the prior art does not explicitly teach, the total number is rounded to either the *nearest or higher 50*, when the general condition of the claimed subject matter (i.e. rounding the value to the nearest multiple or integer) is taught in the prior art (e.g. see Morris para.0046), specifying a particular number for the same purpose requires only a routine skill in the art, and therefore this does not distinguish the current invention from the prior art.

- Claims 34-35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arrendale 2004/0045202.

Regarding claims 34 and 35, Arrendale discloses the claimed limitations as discussed above.

Even if Arrendale does not explicitly disclose, *the caloric content of the package is about 20 or more calories than the caloric content of a serving; the caloric content of the package is about 50% or more calories than the caloric content of a serving*, it would

have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that a package of a given food product often has a calorie value (total calorie value of the package) higher than the serving value, and therefore specifying the calorie amounts to be specific values requires only a routine skill in the art.

Regarding claim 39, Arrendale discloses the claimed limitations as discussed above.

Arrendale does not explicitly disclose the display being in electronic form.

However, it is clear from the teaching of the prior art that the food label taught in Arrendale is a computer printed label, and therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that this label is stored and displayed by a computer (i.e. displayed in electronic form) before it gets printed.

- Claims 41 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bukowski 2003/0106940.

Regarding claim 41, Bukowski discloses the claimed limitations as discussed above.

Even if Bukowski does not explicitly disclose, *the substantially uniform caloric content is 50 or 100 calories*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that calories on labels of food packages are often expressed as multiples of some percentage (or integer values),

and therefore, specifying a particular integer as a multiple that have the same purpose (as taught by the prior art) requires only a routine skill in the art.

Regarding claim 47, Bukowski discloses the claimed limitations as discussed above.

Here also, it is clear from the teaching of the prior art that the printed barcode labels taught in Bukowski are computer printed barcode labels, and therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that these barcode labels are stored and displayed by a computer (i.e. displayed in electronic form) before they were printed.

- Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 2004/0138820.

Regarding claim 50, Morris discloses the claimed limitations as discussed above.

Even if Morris does not explicitly disclose, *the substantially uniform number is 50 or 100*, here also, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that calories on labels of food packages are often expressed as multiples of some percentage (or integer values), and therefore, specifying a particular integer as a multiple that have the same purpose (as taught by the prior art) requires only a routine skill in the art.

- Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 2004/0138820 in views of Bukowski 2003/0106940.

Regarding claim 51, Morris discloses the claimed limitations as discussed above.

Morris does not explicitly disclose, the number of calories per serving of the food product is not presented.

However, Bukowski teaches, the number of calories per serving of the food product is not presented (see FIG 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Morris in view of Bukowski by incorporating a computer readable barcodes in order to label food packages that do not have enough space to hold detailed printed information, so that the user would simply scan the bar code thereby acquiring the required information regarding the food item.

- Claims 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 2004/0138820 in views of Arrendale 2004/0045202.

Regarding claim 52, Morris discloses the claimed limitations as discussed above.

Morris does not explicitly disclose, the pre-determined approximate number of calories or Centicals is different than the approximate number of calories or Centicals per serving or per weight unit.

However, Arrendale teaches, the pre-determined approximate number of calories or Centicals is different than the approximate number of calories or Centicals per serving or per weight unit (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Morris in view of Arrendale by specifying the total amount of calorie in the food package and the suitable serving amount of the food item on the label in order to update the consumer the total amount of

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calorie he/she is getting per package and also the recommended amount of calorie so that the consumer would make informed decision when purchasing and consuming the product.

Regarding claims 53 and 55, Morris in view of Arrendale teaches the claimed limitations as discussed above.

Even if Morris in view of Arrendale does not explicitly teach, *the pre-determined approximate number of calories or Centicals of the food product is 50% or more than the approximate number of calories or Centicals per serving, the pre-determined approximate number of calories is selected from the group consisting of 50, 100, 150, 200, 250, 300, 350, 400, 450, 500, 600, 750 and 1000*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that a package of a given food product often has a calorie value (total calorie value of the package) higher than the serving value, and therefore specifying the calorie amounts to be specific values requires only a routine skill in the art.

Regarding claim 54, Morris discloses the claimed limitations as discussed above.

Morris does not explicitly disclose, the nutritional content of the food product being reported comprises at least one of the following: the weight, price, fat, saturated fat, unsaturated fat, trans fat, protein, carbohydrate, vitamin and mineral content of the product.

However, Arrendale teaches, the nutritional content of the food product being reported comprises at least one of the following: the weight, price, fat, saturated fat, unsaturated fat, trans fat, protein, carbohydrate, vitamin and mineral content of the

product (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Morris in view of Arrendale by including the nutritional information associated with the food product, and also the serving amount on the label in order to update the consumer the total amount of calorie he/she is getting per package and also the recommended amount of calorie so that the consumer would make informed decision when purchasing and consuming the product.

- Claims 59 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over RHEE 2001/0043968.

Regarding claim 59 and 62, RHEE discloses the claimed limitations as discussed above.

Even if RHEE does not explicitly disclose, *the substantially uniform number is 50 or 100, the pre-determined approximate number of calories or Centicals of the food product is 50% or more than the approximate number of calories or Centicals per serving*, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to recognize the fact that calories on labels of food packages are often expressed as multiples of some percentage (or integer values), and therefore, specifying a particular integer as a multiple that have the same purpose (as taught by the prior art) requires only a routine skill in the art.

- Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over RHEE 2001/0043968 in views of Bukowski 2003/0106940.

Regarding claim 60, RHEE discloses the claimed limitations as discussed above.

RHEE does not explicitly disclose, the number of calories per serving of the food product is not displayed.

However, Bukowski teaches, the number of calories per serving of the food product is not displayed (see FIG 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of RHEE in view of Bukowski by incorporating a computer readable barcodes in order to label food packages that do not have enough space to hold detailed printed information, so that the user would simply scan the bar code thereby acquiring the required information regarding the food item.

- Claims 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over RHEE 2001/0043968 in views of Arrendale 2004/0045202.

Regarding claim 61, RHEE discloses the claimed limitations as discussed above.

RHEE does not explicitly teach, the pre-determined approximate number of calories or Centicals is different than the approximate number of calories or Centicals per serving.

However, Arrendale teaches, the pre-determined approximate number of calories or Centicals is different than the approximate number of calories or Centicals per serving (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of RHEE in view of Arrendale by specifying the total amount of calorie in the food package and the suitable serving amount of the food item on the label in order to update the consumer the total amount of

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calorie he/she is getting per package and also the recommended amount of calorie so that the consumer would make informed decision when purchasing and consuming the product.

Regarding claim 63, RHEE discloses the claimed limitations as discussed above.

RHEE does not explicitly disclose, the nutritional content of the food product being reported comprises the weight, price, fat (saturated and unsaturated), protein, carbohydrate, vitamin and mineral content of the product.

However, Arrendale teaches, the nutritional content of the food product being reported comprises the weight, price, fat (saturated and unsaturated), protein, carbohydrate, vitamin and mineral content of the product (see FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of RHEE in view of Arrendale by including the nutritional information associated with the food product, and also the serving amount on the label in order to update the consumer the total amount of calorie he/she is getting per package and also the recommended amount of calorie so that the consumer would make informed decision when purchasing and consuming the product.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruk A. Gebremichael whose telephone number is (571) 270-3079. The examiner can normally be reached on Monday to Friday (7:30AM-5:00PM) ALT. Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bruk A Gebremichael/  
Examiner, Art Unit 3715

/Cameron Saadat/  
Primary Examiner, Art Unit 3715